

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
THE CITY OF TACOMA,
DEPARTMENT OF PUBLIC UTILITIES,
BELT LINE RAILWAY DIVISION,

Appellant,

V.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 80-130

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal from the issuance of \$250 civil penalty of the alleged violation of Section 9.03(b) of Regulation I, having come on regularly for formal hearing on October 21, 1980, in Seattle, and appellant represented by its attorney G. S. Karavitis, Assistant City Attorney and respondent represented by its attorney Keith D. McGoffin, with Nat W. Washington presiding, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 5th day of November, 1980, and more than twenty days having

1 elapsed from said service; and

2 The Board having received no exceptions to said Proposed Order
3 and the Board being fully advised in the premises; NOW THEREFORE,

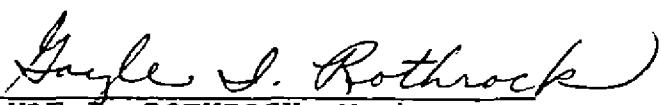
4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
5 Order containing Findings of Fact, Conclusions of Law and Order dated
6 the 5th day of November, 1980, and incorporated by reference herein
7 and attached hereto as Exhibit A, are adopted and hereby entered
8 as the Board's Final Findings of Fact, Conclusions of Law and Order
9 herein.

10 DONE this 27th day of March, 1981.

11 POLLUTION CONTROL HEARINGS BOARD

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14 NAT W. WASHINGTON, Chairman

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17 DAVID AKANA, Member

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20 GAYLE I. ROTHROCK, Member

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26 FINAL FINDINGS OF FACT,
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PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal from the issuance of \$250 civil penalty of the alleged violation of Section 9.03(b) of Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, at a formal hearing in Seattle, Washington, on October 21, 1980. Appellant was represented by its attorney G. S. Karavitis, Assistant City Attorney. Respondent was represented by its attorney Keith D. McGoffin. Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

EXHIBIT A

FINDINGS OF FACT

I.

Pursuant to RCW 43.21B.260, respondent has filed with the Board a certified copy of its Regulation I, an amendment thereto, which are noted.

II.

On the 2nd day of June, 1980, at about 1:30 p.m., respondent's inspector noticed a blue-white colored plume rising from appellant's site in the tide flat industrial area of Tacoma. It was determined that the plume was coming from the forward stack of diesel engine locomotive No. 1200. After positioning himself, he recorded a consistent opacity of 50 percent for thirteen consecutive minutes. Thereafter, the inspector met with appellant's superintendent and learned that the engine was in the warming up process during startup. No notification of the startup was given to respondent pursuant to Section 9.16 of Regulation I.

For the foregoing occurrence, appellant was issued a notice of violation from which followed a \$250 civil penalty and the instant appeal.

III.

It is common practice during startup to warm diesel locomotive engines for thirty to sixty minutes prior to releasing them for work. Such warmup is needed to avoid damage to the engine. Engine No. 1200 was being warmed up at the time of the violation.

IV.

The appellant defends its failure to give notification of the

PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF
LAW AND ORDER

1 startup as required by Section 9.16 by contending that an agreement
2 that notice would no longer be necessary was arrived at during a
3 meeting between officials of both agencies in the spring of 1979.
4 Appellant contends that the meeting was held for the purpose of
5 eliminating the burden placed on both agencies because of the almost
6 daily submission of startup reports by appellant, and that it was
7 agreed that the appellant would no longer be required to make startup
8 reports in order to excuse violations of Section 9.03(b). Respondent,
9 on the other hand, contends that the meeting was held between the two
10 agencies in February of 1979 to discuss matters relating to air
11 pollution resulting from startup conditions, and to discuss ways and
12 means of preventing continued pollution. Respondent contends
13 appellant agreed to reduce pollution at startup by installing standby
14 heaters. Respondent denied that any agreement was made to excuse the
15 appellant from giving startup notification as required by Section
16 9.16. There is definitely direct conflict in the testimony. We find,
17 however, that a good faith misunderstanding took place.

18 V.

19 Since oral agreements are frequently subject to misinterpretation
20 and misunderstanding, they should not be relied on as a license to
21 ignore officially adopted rules and regulations. Before adopting a
22 policy of not giving the notice specifically required by Section 9.16,
23 appellant should have secured written authorization.

24 VI.

25 Any conclusions of law hereinafter recited should be deemed a
26 finding of fact is hereby adopted as such

27 PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF
LAW AND ORDER

1 From these findings, the Pollution Control Hearings Board comes to
2 these

3 CONCLUSIONS OF LAW

4 I.

5 Appellant violated section 9.03 on June 2, 1980, by failing to
6 immediately notify the respondent as provided by Section 9.16 that it
7 was violating emission standards due to startup conditions.

8 II.

9 The appellant failed to establish that respondent should be
10 estopped from enforcing Section 9.03.

11 III.

12 Because appellant acted in good faith in ceasing to give the
13 notice required by Section 9.16, the civil penalty should be mitigated
14 by suspension.

15 IV.

16 Any finding of fact which should be deemed a conclusion of law is
17 hereby adopted as such.

18 From these conclusions, the Pollution Control Hearings Board makes
19 this

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26 PROPOSED FINDINGS OF
27 FACT, CONCLUSIONS OF
LAW AND ORDER

ORDER

The \$250 civil penalty is affirmed, provided, however, that the civil penalty is suspended on condition that appellant not violate the respondent's regulations for a period of one year from the date of appellant's receipt of this Order.

Dated this 5th day of November, 1980.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON
Presiding Officer

PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF
LAW AND ORDER